



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
Chair
CAROLE MIGDEN
Member
DONNA ARDUIN
Member

September 30, 2004, Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/law/Lit_roster.pdf.

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX
CLOSED CASES – SEPTEMBER 2004

Case Name

Court Number

None

FRANCHISE AND INCOME TAX
NEW CASES – SEPTEMBER 2004

Case Name

Court Number

Galaski, Gregory John

San Diego Superior Court No. IC833950

Lavine, Elizabeth

Sacramento Superior Court No. 04AS03347

Staples, Mark

Sacramento Superior Court No. 04AS03598

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

SEPTEMBER 2004

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Taxpayer's Counsel

Holly Kendig, Christopher W. Campbell
O'Melveny & Myers, LLP

Filed – 05/23/03

FTB's Counsel

Brian Wesley

- Issues
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
 3. Whether plaintiffs timely filed the suit for refund.

<u>Years</u>	1992 and 1993	<u>Amount</u>	\$4,912,037.26
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Status Judgment and Notice of Entry of Judgment in favor of Defendant filed on August 17, 2004.
Notice of Entry of Judgment filed by Plaintiffs' attorney on August 20, 2004.

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03425690

Taxpayer's Counsel

Roy E. Crawford, Robert J. Waldow
Heller, Ehrman, White & McAuliffe, LLP

Filed – 10/23/03

FTB's Counsel

David Lew

- Issues
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
 2. Whether section 24344(b) controls the allocation of interest expense.
 3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
 4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
 5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

<u>Year</u>	1991	<u>Amount</u>	\$2,824,983.00
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Status Case Management Conference held on September 13, 2004, and then continued to September 20, 2004. Trial briefs filed by plaintiff and defendant on September 20, 2004. Trial commenced on September 20, 2004. On September 24, 2004, the trial was continued to October 5, 2004.

BRESLOW, BARRY & WENDY v. Franchise Tax Board

Los Angeles Superior Court Docket No. 03K20961

Taxpayer's CounselCharles P. Rettig, Steven D. Blanc & Sharyn Fisk
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed – 12/02/03

FTB's Counsel

Felix E. Leatherwood

- Issues
1. What portion of the Program Area Sales and Use Tax Credit passes through to shareholders in an S Corporation?
 2. Whether the Franchise Tax Board should be equitably estopped from denying the claim for refund.

Year 1994 Amount \$49,500.00

Status Case Management Review held on September 13, 2004.

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's CounselEric J. Coffill, Carley A. Roberts
Morrison & Foerster, LLP

Filed – 02/07/03

FTB's Counsel

Steven J. Green

- Issues
1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
 2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years 1974-1982, 1984-1987, 1989-1991 Amount \$2,912,696.00

Status The Trial Setting Conference was postponed to December 6, 2004.

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733Taxpayer's CounselJoanne Garvey, & Teresa Maloney
Heller, Ehrman, White & McAuliffe

Filed - 12/20/89

FTB's Counsel

Steven Green

- Issue Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.
- Years 1980 through 1985 Amount \$1,137,006.98
- Status Supplemental Brief of Amicus Curiae, California Credit Union League, in Support of Appellants and Cross-Respondent mailed on August 27, 2004.

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Court of Appeal, 1st Appellate District, No. A106315Taxpayer's Counsel

John E. Cassinat & Ronald L. Carello

Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

- Issues
1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
 2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years 1991 through 1994 Amount \$149,696.00

Status Defendant/Appellant's Request for an Extension of Time to File Brief granted on August 2, 2004.

FUJITSU IT HOLDINGS, INC. v. Franchise Tax Board[Amdahl Corporation v. Franchise Tax Board] 120 Cal.App.4th 459

San Francisco Superior Court Docket No. 321296

Filed – 05/14/01

Court of Appeal, 1st Appellate District Court Div. 2, No. A101101 (FTB)Court of Appeal, 1st Appellate District Court Div. 2, No. A101203 (Amdahl)Court of Appeal, 1st Appellate District Court Div. 2, No. A102558 (Attorney's fees)

California Supreme Court No. S127167

Taxpayer's Counsel

Timothy K. Roake

Fenwick & West LLP

FTB's Counsel

Kristian Whitten

- Issues
1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
 2. Whether Section 24411 was properly applied in this case.
 3. Whether Section 24411 discriminates against foreign commerce.
 4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
 5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

Years 1988, 1989, 1991 and 1992 Amount \$2,935,439.00

Status **The answer to the petition for review was filed by Plaintiff/Respondent on September 3, 2004. The reply of the Defendant/Appellant in support of petition for review was filed September 9, 2004.**

GALASKI, GREGORY JOHN v. Franchise Tax Board
San Diego Superior Court Docket No. IC833950
Taxpayer's Counsel
Gregory Galaski, In Pro Per

Filed – 08/09/04
FTB's Counsel
Gregory S. Price

Issues 1. Whether Plaintiff has filed claims for refund for each of the years.
2. Assuming claims for refund were filed whether there was an overpayment of tax.

Years 1999 through 2003 **Amount** \$13,092.37

Status **Complaint for Declaratory, and Injunctive Relief, and for Refund of Overpayment of Taxes Already Paid Against Earnings served on Franchise Tax Board on September 9, 2004.**

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404
Court of Appeal, 2nd Appellate District No. B165665
California Supreme Court No. S127086

Filed – 03/06/02

Taxpayer's Counsel
Charles R. Ajalat
Law Office of Ajalat, Polley & Ayoob

FTB's Counsel
Stephen Lew, Donald
Currier & Joseph O'Heron

Issues 1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
2. Whether interest income was properly characterized as business income.
3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
5. Whether various receipts from intangible assets were properly excluded from the sales factor.
6. Whether research tax credits were properly limited to the entity incurring the expense.
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years 1986 through 1988 **Amount** \$10,692,755.00

Status **Defendant/Appellant FTB's Answer to Petition for Review filed on September 7, 2004. Amicus Curiae Letter in Support of Granting Review in Case No. S127086 mailed to the Supreme Court by Preston Gates & Ellis LLP on September 7, 2004.**

Plaintiffs/Appellants' (GM) Reply to Answer to Petition for Review mailed on September 16, 2004. Defendant/Appellant FTB's Response to Request for Depublication Submitted on Behalf of Microsoft Corporation filed on September 17, 2004, with the California Supreme Court.

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

Filed – 11/12/03

FTB's Counsel

Donald Currier

Issue Whether Plaintiffs were entitled to a business bad debt reduction.

Years 1990 and 1993 Amount \$65,738.00

Status Trial scheduled for November 29, 2004. Plaintiffs' Motion for Summary Judgment, Memorandum of Points & Authorities, supporting Declarations, Statement of Facts and Request for Judicial Notice filed August 12, 2004.

HARDIE, GEORGE G. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC292256

Taxpayer's Counsel

Richard E. Posell, Gregory P. Korn

Greenberg, Glusker, Fields, Claman,

Machtinger & Kinsella, LLP

Filed – 03/18/03

FTB's Counsel

Anthony Sgherzi

George M. Takenouchi

Issue Whether Plaintiff was a resident of California for the year in issue.

Year 1993 Amount \$1,172,932.00

Status Order to Show Cause re: Dismissal continued to October 26, 2004; Plaintiff's Notice of Continuance filed on August 27, 2004.

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court No. A382999

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison

Hutchison & Steffen

H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

James W. Bradshaw

McDonald, Carano, Wilson LLP

Las Vegas, Nevada

Issues

1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years 1991 and 1992 Amount \$13,204,611.00

Status Clark County District Court:
Discovery proceeding.

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC298685

Filed – 07/09/03

Court of Appeal 2nd Appellate District Court No. B175952

Taxpayer's Counsel

FTB's Counsel

Derek L. Tabone, Esq.

Brian Wesley

Law Offices of Tabone, APC

Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

Years 1999 through 2001 Amount \$209,742.00

Status Plaintiffs' Notice of Appeal filed on June 7, 2004.

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Court of Appeal, 1st Appellate District Court No. A107209

Taxpayer's Counsel

FTB's Counsel

Edwin P. Antolin

George C. Spanos

Silverstein & Pomerantz

Jordan M. Goodman, Brian L. Browdy

Horwood, Marcus & Berk

Issues

1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year 1987 Amount \$133,042.00

Status **Appellant's Stipulation of Extension of Time to file Opening Brief on October 21, 2004. Motion for order permitting attorneys Jordan M. Goodman and Brian L. Browdy to Appear Pro Hac Vice for Appellant filed September 13, 2004. Order filed on September 16, 2004, allowing attorneys to appear Pro Hac Vice in support of Appellants.**

K-MART, CORPORATION, et al. v. Franchise Tax Board

U.S. Bankruptcy Court for the Northern District of Illinois

Filed – 04/11/03

Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Taxpayer's Counsel

FTB's Counsel

Charles F. Smith

Michael Cornez

Skadden, Arps, Slate, Meagher & Flom

Larry Fischer

Issues

1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
3. Whether dividends and interest received with respect to Coles was business income.
4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
5. Whether two insurance subsidiaries were properly excluded from the combined report.
6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
8. Whether section 24402 is constitutional.
9. Whether adjustments based upon federal RAR's were correctly made.
10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
11. Whether an under-payment penalty was properly imposed.

Years 1986-1989, 1992-1994, **Amount** \$3,524,625.00 - Tax
 1999 and 2000 \$ 82,590.01 - Penalty

Status Status Conference held on August 29, 2004.

LAVINE, ELIZABETH v. Franchise Tax Board
Sacramento Superior Court Docket No. 04AS03347
Taxpayer's Counsel
Elizabeth Lavine, In Pro Per

Filed – 09/07/04
FTB's Counsel

Issues

1. Whether the suit for refund was filed timely.
2. Whether Plaintiff was a resident of California in 1999.

Year 1999 **Amount** \$4,579.91

Status Summons and Complaint served on Franchise Tax Board on an unknown date.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board
 Alameda Superior Court Docket No. 837723-0
 Court of Appeal, 1st Appellate District Court No. A102915
Taxpayer's Counsel
 Edwin P. Antolin
 Morrison & Foerster, LLP

Filed – 04/09/01
FTB's Counsel
 Joyce Hee

Issues

1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

<u>Years</u>	1993 and 1994	<u>Amount</u>	\$2,185,718.00
<u>Status</u>	Plaintiffs/Appellants' Letter Brief filed August 17, 2004. Defendant/Respondent's Letter Brief filed August 18, 2004.		

THE LONG TERM INVESTMENT/Trustee Chase Bank v. Franchise Tax Board	
Los Angeles Superior Court Docket No. BC 312094	Filed – 03/12/04
<u>Taxpayer's Counsel</u> Jeffrey G. Varga, Ethan Lipsig Paul, Hastings, Janofsky & Walker, LLP	<u>FTB's Counsel</u> Donald R. Currier

Issue Whether Revenue and Taxation Code section 17651 is preempted by 29 USC § 1144 (a).

<u>Years</u>	1994, 1997 through 2000	<u>Amount</u>	\$2,905,255.00
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Status Case Management Conference completed on August 30, 2004. Final Status Conference scheduled for April 21, 2005, and Trial to be held on May 5, 2005.

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board	
San Francisco Superior Court Docket No. 302520	Filed - 04/05/99
Court of Appeal, 1 st Appellate Dist. No. A091644	
California Supreme Court No. S 104529	
<u>Taxpayer's Counsel</u> William E. Taggart, Jr. Taggart & Hawkins	<u>FTB's Counsel</u> Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

<u>Year</u>	1993	<u>Amount</u>	\$244,012.00
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Status Defendant's Final Reply Brief on Remand filed August 4, 2004.

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board	
San Francisco Superior Court Docket No. CGC 03424737	Filed - 09/24/03
<u>Taxpayer's Counsel</u> Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang Pillsbury Winthrop, LLP	<u>FTB's Counsel</u> Anne Michelle Burr

Issues

1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

<u>Years</u>	1993 and 1994	<u>Amount</u>	\$606,744.00
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Status Mandatory Settlement Conference rescheduled to November 17, 2004. Trial continued to December 6, 2004. **Defendant's Motion to Compel Further Responses to First Set of Interrogatories filed September 2, 2004, and taken off calendar. Defendant FTB's Ex Parte Application for Order Approving Joint Stipulation Resolving Second Cause of Action filed September 27, 2004. Joint Stipulation Resolving Second Cause of Action; and Order Thereon filed by the court on September 28, 2004.**

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Filed – 10/19/01

Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312

Taxpayer's Counsel

FTB's Counsel

James P. Kleier, Esq.

Julian O. Standen

Preston Gates & Ellis, LLP

- Issues
1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
 2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
 3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year 1991 Amount \$1,879,809.00

Status **Court mails oral argument waiver to all parties on September 3, 2004, and puts case on conference list. Request for Oral Argument filed on September 8, 2004, by Plaintiff/Respondent Microsoft Corp., along with a request for the court's permission to file a letter brief. Defendant/Appellant FTB's Request for Oral Argument filed on September 13, 2004. Plaintiff/Respondent's Letter Brief filed on September 14, 2004.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC772282

Filed – 08/27/01

Court of Appeal, 4th Appellate Dist. Division 1, No. D043058 (costs/attorneys' fees)

Court of Appeal, 4th Appellate Dist. Division 1, No. D044362

Taxpayer's Counsel

FTB's Counsel

Steve Mather.

Leslie Branman-Smith

Kajan, Mather and Barish

Kevin Duthoy & Joseph A. Vinatieri

Bewley, Lassenben & Miller, LLP

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$227,246.00

Status **Respondents' and Cross-Appellants' Cross-Reply Brief filed on September 9, 2004 (appeal D043058). Court sends out oral argument waiver (appeal D043058) on September 9, 2004. Stipulation of Extension of Time filed on September 22, 2004; FTB's opening brief due 11/23/04 (appeal D044362.)**

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381

Filed – 08/27/01

Court of Appeal, 4th Appellate Dist. Division 1, No. D043058 (costs/attorneys' fees)

Court of Appeal, 4th Appellate Dist. Division 1, No. D044362

Taxpayer's Counsel

Steve Mather.

Kajan, Mather and Barish

Kevin Duthoy & Joseph A. Vinatieri

Bewley, Lassenben & Miller, LLP

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$670,825.00

Status **Respondents' and Cross-Appellants' Cross-Reply Brief filed on September 9, 2004 (appeal D043058). Court sends out oral argument waiver (appeal D043058) on September 9, 2004. Stipulation of Extension of Time filed on September 22, 2004; FTB's opening brief due 11/23/04 (appeal D044362.)**

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Filed – 12/30/02

Taxpayer's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein

Silverstein & Pomerantz, LLP

FTB's Counsel

Gregory Price

Issues 1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years 1989 through 1994 Amount \$2,694,192.00

Status Status Conference held on May 14, 2004; Case deferred pending outcome of General Motors. Case Management Conference scheduled for September 17, 2004.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS05705

Filed – 10/10/03

Taxpayer's Counsel

Spencer T. Malysiak

Spencer T. Malysiak Law Corp.

FTB's Counsel

Michael Cornez

Issues 1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
 2. Whether a declaratory relief action can be brought to prevent the collection of tax.
 3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
 4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years 1996 and 1997 Amount \$90,773.05

Status Answer of Defendant to Second Amended Complaint for Declaratory Judgment; Injunctive Relief and Refund of Taxes Paid filed on August 6, 2004.

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386

Filed – 07/25/02

Court of Appeal, 2nd Appellate Dist. No. B169465

Taxpayer's Counsel

FTB's Counsel

Richard C. Field

Michael R. Weiss

Bingham McCutchen LLP

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status **Defendant/Respondent FTB's petition for Review filed with the California Supreme Court on September 3, 2004. Plaintiffs/Petitioners' Answer to Defendant/Respondent FTB's Petition for Review filed on September 23, 2004.**

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Filed – 02/20/01

Court of Appeal, 1st Appellate Dist. Div. 2 No. A104602

Taxpayer's Counsel

FTB's Counsel

Allan L. Schare

David Lew

McDermott, Will & Emery

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status Plaintiff/Appellant's Stipulation of Extension of Time filed on August 11, 2004.

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518
Appellate Court – 1st Appellate Dist. Court No. A102401
California Supreme Court No. S 125369

Filed – 09/13/01

Taxpayer's Counsel

Edward Winslow
Layman, Lempert & Winslow

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status Remittitur issued on July 29, 2004.

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931
Appellate Court – 1st Appellate Dist. Court No. A105155

Filed – 11/21/02

Taxpayer's Counsel

Jeffrey M. Vesely, Esq.
Richard E. Nielsen, Esq.
Pillsbury Winthrop, LLP

FTB's Counsel

David Lew

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,133,040.00

Status Appellant's Request for Judicial Notice filed on July 12, 2004, denied on August 11, 2004, for failure to demonstrate relevance of the document. Request for Oral Argument filed by both Appellant and Respondent on August 12, 2004.

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 316070

Filed – 05/25/04

Taxpayer's Counsel

W. Patrick O'Keefe, Jr.
W. Patrick O'Keefe, Jr. Incorporated

FTB's Counsel

Anthony Sgherzi

Issue Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Year 1992 Amount \$45,415.00 Tax
\$ 9,083.00 Penalty

Status Discovery proceeding.

**STAPLES, MARK A. v. Taxpayer Advocate Bureau, Franchise Tax Board, and
State Board of Equalization**

Sacramento Superior Court Docket No.04AS03598

Filed – 09/03/04

Taxpayer's Counsel

FTB's Counsel

Mark A. Staples, In Pro Per

- Issues**
- 1. Whether the method used by California to compute the tax owed by part-year resident violates various provisions of the United States Constitution.**
 - 2. Whether the department's review and disposition of the plaintiff's objections to additional tax were properly handled.**

Year 1998 **Amount** \$1,141.00

Status **Summons and Complaint served on Franchise Tax Board on September 16, 2004, and received in the Legal Department on September 30, 2004.**

TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Filed - 07/17/01

Court of Appeal, 4th Appellate Court No. C045386

Taxpayer's Counsel

FTB's Counsel

Eric J. Coffill

Michael J. Cornez

Carley A. Roberts

Issue **Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.**

Years 1991 through 1994 **Amount** \$5,342,122.00

Status **Defendant/Respondent's Request for Judicial Notice filed August 2, 2004. Ruling on Request for Judicial Notice deferred pending calendaring and assignment of the panel filed August 4, 2004. Plaintiffs/Appellants' Opposition to Respondent's Request for Judicial Notice filed August 17, 2004. Plaintiffs/Appellants' Reply Brief filed on August 19, 2004.**

VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03423154

Filed – 08/05/03

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein

Paul Gifford

Silverstein & Pomerantz, LLP

Issue **Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.**

Year 1997 **Amount** \$205,874.00

Status **Notice of Entry of Judgment for Plaintiffs filed July 12, 2004.**

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Taxpayer's Counsel

Dwayne M. Horii

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

- Issues
1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
 2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years 1986 and 1987 Amount \$1,741,534.00

Status Minutes Entered; Court's Ruling in favor of Defendant filed June 22, 2004. Defendant's Proposed Statement of Decision filed June 28, 2004. Plaintiff's Objections to Proposed Statement of Decision filed July 6, 2004.